THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.1353 of 2006

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Dated:27.01.2006

Between:

Gatti Kota Satyam, S/o. janaradhana Rao,
R/o. 14/65, Jangala Street, Dowleswaram,
Rajahmundry, E.G.District.

..... PETITIONER

AND

The Dowleswaram Gram Panchayat, Dowleswaram, E.G.District, rep.

by its Executive Officer, and another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.1353 of 2006

ORDER:

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The petitioner is a resident of Dowleswaram. Aggrieved by the notice, dated 18.01.2006, issued by the first respondent, the petitioner filed the instant writ petition seeking invalidation of the said notice.

It is the case of the petitioner that he is the owner of an old house bearing D.No.14/65 at Jangala Street, Dowleswaram, Rajahmundry, East Godavari District. So as to reconstruct, he approached the Andhra Pradesh Housing Board Corporation for a loan, which provided cement and other construction material. The cost of the same is repayable in installments. The petitioner has not encroached upon any land. After he completed construction, the first respondent issued notice alleging that he constructed without obtaining permission and that he is constructing by encroaching upon the Panchayat land.

A reading of the impugned notice/order would show that when the petitioner attempted to occupy Panchayat land and was making unauthorized construction, the

construction was removed. The Gram Panchayat attempted to serve the provisional order, but the petitioner refused to receive the same. It is further alleged that taking advantage of the holiday on 13.01.2006, the petitioner again occupied the Government land and was making illegal construction without even obtaining any permission. He was asked to remove the illegal constructions.

The learned Counsel for the petitioner strenuously contends that when a house is constructed under a Housing Scheme, permission is not required under Section 121 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'). He placed reliance on the orders of the Government in G.O.Ms.No.707, dated 18.12.1990. Secondly, the learned Counsel would urge that when there is an allegation of obstruction of Public Street by a person, the Gram Panchayat is required to get the survey of the street done before taking any action for removal of the encroachments. In this case no such survey was conducted, and therefore, the impugned notice is illegal.

The learned Assistant Government Pleader invites the attention of this Court to Sections 98 and 121 of the Act and submits that the petitioner admittedly is making construction without obtaining any permission, and therefore, the impugned notice is valid.

Section 121 of the Act requires every person to obtain prior permission for making any construction. Admittedly, the petitioner did not obtain any permission from the first respondent-Gram Panchayat, and therefore, the impugned order cannot be faulted. Reliance placed on G.O.Ms.No.707, dated 18.12.1990, is misconceived. A reading of the said Government Order, a copy of which is placed before this Court; would show that the Government, in exercise of their powers under Section 125-A of the Andhra Pradesh Gram Panchayats Act, 1964 (for short 'the 1964 Act'), exempted houses constructed under Weaker Sections Housing Programme (WSHP) from the provisions of the Andhra Pradesh Gram Panchayat Building Rules, 1972. It also notices that as and when building plans are submitted for construction of houses under WSHP, the Gram Panchayats are not approving plans of the houses constructed under the programmes, causing delay. Therefore, it becomes clear that whenever houses are constructed by the District Collectors under any Housing Programme meant for weaker sections such construction stands exempted from the provisions of the Act. Even if it is assumed that the said Government Order issued under Section 125-A of the 1964 Act continues to be in force even after coming into force of 1994 Act, the same has no application to the house of the petitioner. Admittedly, the petitioner has approached the second respondent for the loan for construction of house on his own land, and such house is not being constructed by the District Collector under any Housing Programme taken up by the Government. Secondly, the Counsel has not placed any material before this Court that the petitioner obtained any loan under any WSHP, and therefore, the petitioner cannot place any reliance on G.O.Ms.No.707, dated 18.12.1990. The main allegation against the petitioner is that he is making construction without obtaining any permission and he also tried to occupy Gram Panchayat land at Jangala Street. Having regard to such allegation, the Rules framed by the Government in G.O.Ms.No.555, dated 03.12.1999, relating to powers to remove obstructions of

Public Street have no application.

The Writ Petition is devoid of any merit and is accordingly dismissed.

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(V.V.S.RAO, J)

27.01.2006

Note: Issue C.C by 31.01.2006

B/o.

vs